

CITY PLANNING & ZONING COMMISSION
MEETING MINUTES
September 23, 2009

The Bismarck Planning & Zoning Commission met on September 23, 2009, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Building, 221 North 5th Street. Chairman Yeager presided.

Commissioners present were Mark Armstrong, Mel Bullinger, Jo Conmy, Jack Hegedus, Curt Juhala, Elden Spier, Lisa Waldoch, Jan Wangler, and Wayne Yeager.

Commissioners Doug Lee and John Warford were absent.

Apple Creek Township Representative Paul Zent was present.

Staff members present were Gregg Greenquist – Planner, Kim Lee –Planning Manager, Jason Tomanek – Planner, Kimberley Gaffrey– Office Assistant III and Charlie Whitman – City Attorney.

Others present were Attas & Maria Boutrous – 3420 Gallatin Loop, Bismarck, Greg Peterson – 3432 Gallatin Loop, Bismarck, Damon Jorgensen – 128 Soo Line Drive, Bismarck, Kevin Nelson – 1412 Basin Avenue, Bismarck, Greg Haug – 2301 University Drive Bldg #17, Bismarck, Kim Melin – 86 Country Club Drive, Bismarck, Zac Hedstrom – 200 Lorrain Drive #205, Bismarck, Connie Herman – 14900 Sundown Drive, Bismarck, Richard & Charlotte Hammond – 5324 Meadow Lark Lane, Bismarck, Helen Hammond – 700 52nd Street, Bismarck, Dave Patience – 909 Basin Avenue, Bismarck, John Roswick – 5015 East Main Avenue, Bismarck, Keith Larson – 3456 Gallatin Drive, Bismarck, Randy Mathern – 1729 Catherine Driver, Bismarck, Ann Andre – 2200 Far West Road, Bismarck, Jim & Cathie Volk – 3397 Gallatin Drive, Bismarck, Wade Mann – 400 East Broadway Avenue, Bismarck, Robert Heringer – 2113 Santa Barbara Street, Bismarck, Paul & Trey Zent – 5100 93rd Street Southeast, Bismarck, Don Weisz – 172 Brandon Circle, Bismarck, Mark Swenson – 6550 University Drive, Bismarck, Art Rode – 2801 East Rosser Avenue #1, Bismarck and Dwayne Walker – 1847 Harding Place, Bismarck.

MINUTES

Chairman Yeager called for consideration of the minutes of the August 26, 2009 meeting.

MOTION: Commissioner Wangler made a motion to approve the minutes of the August 26, 2009 meeting as received. Commissioner Conmy seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Spier, Waldoch, Wangler and Yeager voting in favor of the motion.

**CONSIDERATIONS –
ZONING CHANGE FROM A-AGRICULTURE AND CONDITIONAL RM15-
RESIDENTIAL TO RT-RESIDENTIAL AND CONDITIONAL RM15-
RESIDENTIAL AND
PRELIMINARY PLAT – NORTH HILLS SIXTEENTH ADDITION
ZONING CHANGE FROM CG-COMMERCIAL TO CONDITIONAL MA-
INDUSTRIAL – LOT 1, BLOCK 4, NORTHSTAR COMMERCIAL PARK THIRD
SUBDIVISION**

Chairman Yeager called for consideration of the following consent agenda items:

- A zoning change from A-Agriculture and Conditional-RM15 to RT-Residential and Conditional-RM15 and preliminary plat for North Hills Sixteenth Addition. The property is three lots in two blocks on 14.783 acres located along the south side of 43rd Avenue between Normandy and Dominion Streets (replat of Lot 5, Block 3, North Hills 15th Addition and an unplatted portion of the West ½ of the Northeast ¼ of Section 21, T139N-R80W/Hay Creek Township.)
- A zoning change from CG-Commercial to Conditional MA-Industrial for Lot 1, Block 4, Northstar Commercial Park Third Subdivision. The property is one lot in one block on 2.0 acres located along the south side of Northstar Drive east of Aurora Street.

MOTION: Commissioner Hegedus made a motion to approve the consent agenda. Commissioner Spier seconded the motion and it was unanimously approved with Armstrong, Bullinger, Conmy, Hegedus, Spier, Waldoch, Wangler and Yeager voting in favor of the motion.

Commissioner Juhala arrived at the meeting.

MAJOR PUD AMENDMENT – LOTS 1 AND 3-18, BLOCK 1, MISSOURI VALLEY COMPLEX

Chairman Yeager called for the public hearing for the Major PUD Amendment for Lots 1 and 3-19, Block 1, Missouri Valley Complex. The property is located on the east edge of Bismarck, south of County Highway 10/Main Avenue and east of Bismarck Expressway.

Mr. Greenquist indicated that this is a County request to amend/revise the existing PUD to add utilities as a permitted use on all lots and to allow camping in conjunction with certain activities on specific lots. Although utilities are allowed in all zoning districts, provisions for utilities were not included in the PUD ordinance. Now a cell tower is being considered for this area. To allow the cell tower, the PUD must be amended to allow utilities.

Mr. Greenquist provided an overview of the requested and listed the following findings:

1. The City PUD ordinance indicates that the PUD shall only be amended in accordance with the provisions of Section 14-04-18(4) of the City Code of Ordinances (Planned Unit Developments). Approval of a PUD amendment requires a majority vote of the Bismarck Planning & Zoning Commission.
2. All land uses in a PUD are specified in the PUD ordinance. If a specific type of land use is not specified, it is not allowed. To allow utilities and camping within the PUD, new language is proposed as an addition to the permitted uses for this PUD.
3. The proposed PUD amendment would not create incompatibilities with the existing adjacent land uses. Adjacent land uses include undeveloped agricultural land to the north, state prison to the west, industrial land to the southeast and south, undeveloped land to the east zoned A-Agricultural and RR-Residential, and industrial land to the northeast.
4. The property is annexed; therefore, the proposed PUD amendment would not place an undue burden on public services.
5. The proposed PUD amendment is consistent with adopted plans, policies and accepted planning practice.

Mr. Greenquist said based on the above findings, staff recommends approval of the major PUD amendment for Lots 1 and 3-19, Block 1, Missouri Valley Complex, in accordance with the PUD amendment document.

Chairman Yeager opened the public hearing for the Lots 1 and 3-19, Block 1, Missouri Valley Complex.

Richard Hammond said he would like know more information regarding the proposed cell tower, as far as the height and if there will be strobe lights on it, because the drawing shown does not show anything.

Mr. Tomanek responded by saying no formal site plan application has been received by the Community Development Department – Planning Division for a cell tower at this time. Mr. Tomanek continued by saying staff had conversations with a company earlier this year and this location was discussed with the involvement of Burleigh County. Mr. Tomanek said any applications for cell towers are subject to the site plan review process, however, that does not include a public hearing. Mr. Tomanek stated the site plan review process requires details of the plan to be submitted with the application that is handled administratively and if Mr. Hammond has questions in the future regarding the cell tower he can contact the Community Development Department – Planning Division.

Helen Hammond said she would like to know what the plans are for this property. Mr. Greenquist responded by saying Lot 13 is designated for nature and recreation and currently the

motocross track is located on Lot 12. Mr. Greenquist went on to say that the amendment to the PUD is to allow camping on Lots 14 and 18 and a cell tower, but the exact location of the cell tower has not been determined at this time.

Ms. Hammond then asked where the access road will be located and how long it will be. Ms. Lee answered by saying the access road was part of the plat that was approved in 2004 and recorded in 2006, so the access road will not be changing. Ms. Lee continued by saying the original PUD is not changing except to allow camping on specific areas and the addition of utilities on all lots.

Ms. Hammond asked if there is going to be anything done about the runoff water that goes into her creek. Ms. Lee said at the time the original plat and PUD was approved there was a storm water management plan approved. Ms. Lee commented that the amendment to the PUD is not affecting the layout of the lots or storm water management. Chairman Yeager added that the questions Ms. Hammond is asking are related to when the plat was approved and it does not relate to the PUD amendment that is currently being discussed. Chairman Yeager asked staff to answer Ms. Hammond's questions and get the information to her. Ms. Lee said staff will gather the additional information for Ms. Hammond.

John Roswick said he is one of the owners of Midwest Motor Express and MME, Inc. and he would like to offer temporary access to the property and construction site if a cell tower is going to be built, rather than another curb cut being put in. Mr. Roswick went on to say they would like to visit with Burleigh County about extending 50th Street all the way through. It currently ends at the motocross track.

Mark Swenson said he has a few thoughts on the development and how it impacts the cell tower. Mr. Swenson continued by saying he is all for development of this region, but an issue he has is that his property is zoned residential and the proposed amendments do not fit residential. Mr. Swenson commented that he will never be able to develop his property into anything useful with a motocross track next to it, adding the cell tower is a trend to industrial nature that is not compatible with the zoning of the adjacent land. Mr. Swenson added that he would like to work with Burleigh County to get the property adjacent to the fairgrounds zoned industrial and still be able to have residential along the section line road, adding that he is willing to work with Burleigh County to find a compromise that works the best for all parties. Mr. Swenson concluded by saying he would like to see the motion tabled in order to give him an opportunity to work with Burleigh County and the City Planning & Zoning Commission to come up with a layout that addresses his concerns.

Commissioner Wangler said that a land use plan was prepared several years ago for this area and it was found that the highest and best use for this land was residential because it abuts single family residential, however, it was discussed that if there were some type of transitional zoning between the residential and the fairgrounds there would need to be access from the north. Commissioner Wangler went on to say that if there was some type of transitional zoning that would work with residential other than commercial, then there would be more cooperation from the area.

Mr. Swenson said he would be willing to work with Burleigh County and the adjacent property owners to get the road moved like Mr. Roswick suggested he does not think that residential is the best fit for the area because of the motocross track. Mr. Swenson added that industrial zoning would better fit this area with the appropriate landscape buffers between the two zoning districts.

Commissioner Hegedus expressed that at the time the land use plan was prepared the owners of Midwest Motor Express at that time and Mark Swenson's father were going to put a plan together that included a buffer yard and residential along the road, however, nothing was ever presented. Mr. Swenson said he has a storage garage business and that is what he would like to see as a buffer zone between the two zoning districts. Within the City of Bismarck, in order to build storage garages, the zoning must be industrial so that is why he would like to see industrial zoning in this area. Commissioner Wangler commented that no matter whom storage garages are rented to, people do have a tendency to use them as workshops for fixing vehicles or motorcycles and that is a concern. Mr. Swenson said he understands that concern, but on the other hand knows that people do like to have storage a garage close to their residence.

Chairman Yeager closed the public hearing for Lots 1 and 3-19, Block 1, Missouri Valley Complex.

MOTION: Based on the findings contained in the staff report, Commissioner Hegedus made a motion to approve the Major PUD Amendment for Lots 1 and 3-19, Block 1, Missouri Valley Complex, as outlined in the PUD amendment document. Commissioner Wangler seconded the motion with Commissioners Bullinger, Conmy, Hegedus, Juhala, Spier, Wangler and Yeager voting in favor of the motion and Commissioner Waldoch voting against. The motion passed 7-1.

FINAL CONSIDERATION – ANNEXATION PUBLIC HEARING – ZONING CHANGE FROM A-AGRICULTURE TO RR- RESIDENTIAL AND FINAL PLAT– BISMARCK AIRPORT ADDITION

Chairman Yeager called for the public hearing for the zoning change from A-Agriculture, P-Public, MA-Industrial and MB-Industrial to P-Public and MA-Industrial, final plat and annexation of Bismarck Airport Addition, a 2197.7 acre development with 100 lots in 20 blocks. The property is located along the east side of Highway 1804/University Drive (all of Sections 14 & 23 and parts of Sections 10, 11, 12, 13, 15, 22 and 24, T138N-R80W/Lincoln Township).

Ms. Lee provided an overview of the requests and listed the following findings for the zoning change:

1. The proposed zoning change would be consistent with the Land Use Plan.
2. The proposed zoning change is justified by a change in conditions since the previous zoning classification was established. In particular, the Airport has identified specific lots around the perimeter of the property for non-aeronautical development.

3. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses are light industrial uses to the north, agricultural uses to the east and south, and a combination of institutional, residential, commercial and industrial uses to the west.
4. The subdivision proposed for the property is already annexed and served by municipal utilities; therefore, the proposed zoning change would not place an undue burden on public services or facilities.
5. The proposed zoning change would not adversely affect property in the vicinity.
6. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
7. The proposed zoning change is consistent with all adopted plans, policies and accepted planning practice.

Ms. Lee then listed the following findings for the final plat:

1. All technical requirements for approval of a final plat have been met.
2. The storm water management plan has been approved by the City Engineer.
3. The proposed subdivision generally conforms to the Fringe Area Road Master Plan for the area, which identifies all of the existing roadways surrounding the Airport as arterials (Highway 1804/University Drive, Airway Avenue, Yegen Road, and Airport Road south of Airway Avenue).
4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses are light industrial uses to the north, agricultural uses to the east and south, and a combination of institutional, residential, commercial and industrial uses to the west.
5. The proposed subdivision is already annexed and served by municipal services; therefore, the proposed subdivision would not place an undue burden on public services and facilities.
6. The proposed subdivision would not adversely affect property in the vicinity.
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
8. The proposed subdivision is consistent with all adopted plans, policies and accepted planning practice.

Ms. Lee then listed the following findings for the annexation:

1. The proposed annexation will not adversely affect property in the vicinity of the annexation.
2. The proposed annexation is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
3. The proposed annexation is consistent with the master plan, other adopted plans, policies and planning practice.

Ms. Lee said based on the above findings, staff recommends approval of the zoning change from A – Agricultural, P – Public, MA – Industrial and MB – Industrial to MA – Industrial on Lot 4, Block 1; Lot 1, Block 2, Lots 1 & 3, Block 7, Lot 1, Block 8, Lot 1, Block 10, Lot 1, Block 12, Lot 1, Block 15, Lots 1 & 3, Block 17, and Lots 2, 3 & 4, Block 18, and to P – Public for the remainder of the Bismarck Airport Addition plat; approval of the final plat for Bismarck Airport Addition and granting waivers from the following subdivision requirements/standards: 1) maximum block length; 2) use of cul-de-sacs; and 3) use of private roads; and approval of the annexation of that portion of Bismarck Airport Addition not previously annexed (Lots 52-58, Block 1; Lot 2, Block 14; and Lot 1, Block 16).

Chairman Yeager opened the public hearing for the Bismarck Airport Addition.

No public comment was received.

Chairman Yeager closed the public hearing for the Bismarck Airport Addition.

MOTION: Based on the findings contained in the staff reports, Commissioner Hegedus made a motion to approve the zoning change from A – Agricultural, P – Public, MA – Industrial and MB – Industrial to MA – Industrial on Lot 4, Block 1; Lot 1, Block 2, Lots 1 & 3, Block 7, Lot 1, Block 8, Lot 1, Block 10, Lot 1, Block 12, Lot 1, Block 15, Lots 1 & 3, Block 17, and Lots 2, 3 & 4, Block 18, and to P – Public for the remainder of the Bismarck Airport Addition plat; approve of the final plat for Bismarck Airport Addition and granting waivers from the following subdivision requirements/standards: 1) maximum block length; 2) use of cul-de-sacs; and 3) use of private roads; and approve the annexation of that portion of Bismarck Airport Addition not previously annexed (Lots 52-58, Block 1; Lot 2, Block 14; and Lot 1, Block 16). Commissioner Spier seconded the motion and it was unanimously approved with Commissioners Bullinger, Conmy, Hegedus, Juhala, Spier, Waldoch, Wangler and Yeager voting in favor of the motion.

PUBLIC HEARING – ZONING CHANGE FROM A-AGRICULTURE TO RR-RESIDENTIAL AND R5-RESIDENTIAL AND FINAL PLAT – BURLEIGH AVENUE SUBDIVISION

Chairman Yeager called for the public hearing for the zoning change from A-Agriculture to RR-Residential and R5-Residential and final plat of Burleigh Avenue Subdivision, a 3.01 acre development with two lots in one block. The property is located along the south side of Burleigh between Washington and Downing Streets (Lot C & Part of Lot B and Part of the NE ¼ of the NE ¼ of Section 20 T138N/R80W – Lincoln Township).

Mr. Tomanek provided an overview of the requests and listed the following findings for the zoning change:

1. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include partially developed R5 and R10 zoned property to the west, single-family dwellings to the north and A-Agriculture zoned property to the east and south.
2. The City and other agencies would be able to provide necessary public services, facilities and programs to serve the development allowed by the proposed subdivision. Currently Lot 2, Block 1 is annexed to the City of Bismarck and is connected to City services, Lot 1, Block 1 is outside City limits and operates with a septic system and a personal well for water.
3. The proposed zoning change would not adversely affect property in the vicinity.
4. The proposed zoning change is consistent with the general intent and purpose of this land development code.
5. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice.
6. The Future Land Use Plan identifies this area for urban residential

Mr. Tomanek then listed the following findings for the final plat:

1. All technical requirements for consideration of a final plat have been met.
2. The proposed subdivision does not impact the Fringe Area Road Master Plan for this section. Downing Street is the north-south collector and Glenwood Drive is the east-west collector.
3. As this property is developed and no activity is proposed at this time, the storm water management plan requirement will be waived. If the plat is revised to add additional lots for development, a storm water management plan will need to be submitted and approved prior to plat approval.

4. The proposed subdivision would be compatible with adjacent land uses; adjacent land uses include partially developed R5 and R10 zoned property to the west, single-family dwellings to the north and A-Agriculture zoned property to the east and south.
5. The City and other agencies would be able to provide necessary public services, facilities and programs to serve the development allowed by the proposed subdivision. Currently Lot 2, Block 1 is annexed to the City of Bismarck and is connected to City services, Lot 1, Block 1 is outside City limits and operates with a septic system and a personal well for water.
6. The proposed subdivision would not adversely affect property in the vicinity.
7. The proposed subdivision is consistent with the general intent and purpose of this land development code.
8. The proposed subdivision is consistent with the master plan, other adopted plans, policies and general planning practice.

Mr. Tomanek said based on the above findings, staff recommends approval of the zoning change from A – Agricultural to RR-Residential and R5-Residential and final plat of Burleigh Avenue Subdivision.

Chairman Yeager opened the public hearing for the Burleigh Avenue Subdivision.

No public comment was received.

Chairman Yeager closed the public hearing for the Burleigh Avenue Subdivision.

MOTION: Based on the findings contained in the staff reports, Commissioner Hegedus made a motion to approve the zoning change from A-Agriculture to RR-Residential and R5-Residential and final plat of Burleigh Avenue Subdivision. Commissioner Wangler seconded the motion and it was unanimously approved with Commissioners Bullinger, Conmy, Hegedus, Juhala, Spier, Waldoch, Wangler and Yeager voting in favor of the motion.

PUBLIC HEARING – SPECIAL USE PERMIT FOR LOT 12 AND PART OF VACATED THAYER AVENUE, BLOCK 4, EASTDALE ADDITION

Chairman Yeager called for the public hearing for special use permit to allow a daycare facility for Lot 12 and East 10 feet of Vacated Thayer Avenue to the West Lot Line, Block 4, Eastdale Addition (300 North 31st Street). The property is located along the east side of 31st Street North between Broadway and Rosser Avenues. (Lot 12 and part of the vacated Thayer Avenue right-of-way, Block 4, Eastdale Addition).

Mr. Tomanek provided an overview of the requests and listed the following findings for the special use permit:

1. The proposed special use complies with all applicable provision of the zoning ordinance and is consistent with the general intent and purpose of this land development code.
2. The proposed special use would not adversely affect the public health, safety and general welfare.
3. The proposed special use would not be detrimental to the use or development of adjacent properties.
4. The use would be designed, operated and maintained in a manner that is compatible with the appearance of the existing character of the surrounding area.
5. Adequate public facilities and services are in place.
6. The use would not cause a negative cumulative effect, when considered in conjunction with the cumulative effect of other uses in the immediate vicinity.
7. Adequate measures have been taken to minimize traffic congestion in the public streets and provide for appropriate on-site circulation of traffic.

Mr. Tomanek also provided the following additional information:

1. The applicants have been working with the Building Official to satisfy all the requirements necessary to meet the guidelines set forth to establish and operate a day-care facility, in particular the appropriate accommodations have been met to allow for adequate outdoor play space for the children.
2. Section 14-03-08(4)(r) of the City Code of Ordinances outlines the requirements for a day care center. A copy of this section of the City Code is attached.

Mr. Tomanek said that based on the above findings, staff recommends approval of the Special Use Permit to allow the operation of a day care facility on Lot 12 and part of the vacated Thayer Avenue right-of-way, Block 4, Eastdale Addition.

Commissioner Wangler asked what adequate measures have been taken to minimize the traffic congestion in the public streets and provide for appropriate on-site circulation of traffic. Mr. Tomanek responded by saying the necessary off street parking requirements have been met, the traffic flow through the site will be self contained and will not have a negative impact on ingress and egress in the neighborhood.

Chairman Yeager asked if Mr. Ziegler has reviewed the proposed site plan. Mr. Tomanek answered by saying that Mr. Ziegler did review the site plan in conjunction with the special use permit application and worked very closely with the applicants on a number of issues to satisfy parking requirements, outdoor play area requirements, building code and fire code policies.

Commissioner Bullinger inquired if the play space located in the front of the space is required to be fenced. Mr. Tomanek responded by saying yes, it is a state requirement that the area must be fenced.

Chairman Yeager opened the public hearing for the Eastdale Addition special use permit.

Connie Herman said she is one of the owners of Stepping Stones Children's Academy and the fence in question has already been installed.

Commissioner Hegedus asked how the fenced play area will be accessed. Ms. Herman said the front door is located within the fenced area.

Chairman Yeager closed the public hearing for Eastdale Addition special use permit.

MOTION: Based on the findings contained in the staff report, Commissioner Conmy made a motion to approve the special use permit for a daycare facility on Lot 12 and East 10 feet of Vacated Thayer Avenue to the West Lot Line, Block 4, Eastdale Addition (300 North 31st Street). Commissioner Wangler seconded the motion and it was unanimously approved with Commissioners Bullinger, Conmy, Hegedus, Juhala, Spier, Waldoch, Wangler and Yeager voting in favor of the motion.

PUBLIC HEARING – SPECIAL USE PERMIT FOR LOT 1, BLOCK 3, FOX ISLAND SECOND SUBDIVISION

Chairman Yeager called for the public hearing for special use permit to move a house previously occupied at another location to Lot 1, Block 3, Fox Island Second Subdivision (3475 Gallatin Loop). The property is located on the south side of Gallatin Loop and the west of Fontenelle Drive.

Mr. Greenquist distributed written comments received on this request.

Mr. Greenquist provided an overview of the request and listed the following findings for the special use permit:

1. The house proposed for relocation has been inspected by the Bismarck Building Inspection Division. The occupancy permit will be issued when the items on the attached letter are completed.
2. The proposed special use would not adversely affect the public health, safety and general welfare.
3. The proposed special use would not be detrimental to the use or development of adjacent properties.
4. Adequate public facilities and services are in place.

5. The house to be moved and proposed use of the property will be compatible with adjacent land uses and existing zoning.
6. The proposed special use complies with all applicable provision of the zoning ordinance and is consistent with the general intent and purpose of the zoning ordinance.
7. The request is compatible with adopted plans, policies and accepted planning practice.

Mr. Greenquist also provided the following additional information:

1. The placement of a moved house is allowed as a special use in the RR zoning district, provided specific conditions are met. The proposed moved house meets all five provisions outlined in Section 14-03-08(4)(s) of the City Code of Ordinances (Zoning). A copy of this section of the City Code is attached.
2. The house is being moved less than ¼-mile from its current location in the same neighborhood.
3. The house is being moved off this lot to allow the applicants to build a new house there. They would live in the moved house, down the street, until the new house is finished.
4. Although the City does not enforce covenants, some questions have been raised by neighbors on whether the covenants allow only new construction in this subdivision and whether the covenants would allow a house to be moved in. There is also a question on whether the covenants have expired.

Mr. Greenquist said that based on the above findings staff recommends approval of the Special Use Permit to allow a move of a house previously occupied at another location to Lot 1, Block 3, Fox Island Second Subdivision (3475 Gallatin Loop).

Chairman Yeager opened the public hearing for the Fox Island Second Subdivision special use permit.

Don Weisz said that he owns the lot next to where the house is proposed to move to. Mr. Weisz stated that when he purchased the lot he received a copy of the covenants for the subdivision and Item No. 7 of the covenants states that only new construction is allowed on the lots. Mr. Weisz concluded by saying if this special use permit is approved, there could be a precedent set that cannot reversed and he is against this house move.

Mr. Whitman stated that covenants are an agreement among property owners of a common subdivision. As such the City does not have any ability or authority to enforce covenants because the City is not party to that agreement, nor does the City have any authority in the North Dakota Century Code that allows the City to interpret them. Mr. Whitman said that covenants are a judicial matter and for any persons within the subdivision that feel the covenants may be violated, the matter would have to be taken to District Court to be settled.

Ann Andre said that this house move was brought up two years ago by Mr. Boutrous and was shut down at that time because it was not allowed by the covenants and because there are a lot of property owners that do not agree with the move of this house. Ms. Andre went on to say that it is unfortunate that Mr. Boutrous cannot do what he would like to do because of the way the covenants are written, but there are things she would like to do but is not allowed to because of the covenants. Ms. Andre commented that the people that live there bought into this subdivision because of the covenants and there are people that this would directly affect that never got the letter that this meeting was being held. Ms. Andre added that if something like this is going to be done, then everyone in the area should be notified and people are shocked because they thought this was taken care of two years ago. Ms. Andre asked why Mr. Boutrous can't move his house into the proposed Whispering Bay development since he is involved in the development. Ms. Andre said she is confused where the protection comes in as a property owner and if this is approved are there any covenants in town that are protected.

Commissioner Wangler said the issue for the City Planning & Zoning Commission is that they do not have the authority to enforce covenants. Commissioner Wangler added that the City Planning & Zoning Commission does understand the issues brought before them, however, it does not have any bearing on the decision that needs to be made and issues with covenants will have to be addressed with district court.

Ms. Andre inquired if anyone can come to the City Planning & Zoning Commission with anything. Commissioner Wangler responded by saying if the application meets the City's zoning requirements and building codes, it is a yes or no decision. Ms. Andre asked why there are covenants then. Commissioner Wangler answered by saying covenants are between the landowners within the subdivision and has nothing to do with the City Planning & Zoning Commission.

Dwayne Walker said he owns property in Fox Island Second Subdivision and is opposed to having anything moved into the subdivision, adding he was under the impression that only new homes would be built on these lots because it is a unique area.

Wade Mann said he is appearing on behalf of Brian and Karen Bjella, who are currently out of the country, however, they did want to appear at the public hearing to voice their opposition of the proposed special use permit. Mr. Mann stated that he appreciates the City Attorney's and the City Planning & Zoning Commission's stance on the covenants, understands the argument, however, disagrees with it, because he said the City Planning & Zoning Commission does have an impact on this decision because it does affect the zoning ordinance. Mr. Mann went on to say that a special use permit to move an existing structure does require that the structure is compatible with the surrounding neighborhood. The fact that there are covenants in place, that expressly prohibit exactly what Mr. Boutrous is trying to do, is strong evidence that demonstrates that it is not compatible. Mr. Mann continued by saying that nothing has changed from two years ago when this was first attempted and at a minimum this request violates the zoning ordinance and the covenants and should be denied. Mr. Mann concluded by saying the request should be tabled to further discuss and this is the best thing to do at this time.

Randy Mathern said he owns three lots in the development and he opposes the house move because when he purchased the lots he understood that houses could not be moved into the subdivision because it would be against the covenants.

Greg Peterson said he currently owns the lot where the house would be moved to, lives in the area and owns two lots adjacent to the lots where the house would be moved to. Mr. Peterson added that he supports the special use permit because he does not think it is against the spirit of the covenants because the house already exists in the neighborhood and is being moved from one lot to another.

Attas Boutrous said he is the applicant for the special use permit and has met all the City requirements for the house move. Mr. Boutrous stated that he thinks there is not a covenants issue within the Fox Island development because the covenants are expired. Mr. Boutrous went on to say the house is currently in the neighborhood, it fulfills all the covenants, and he merely wants to move it down the road. Mr. Boutrous continued by saying he started this process two years ago and decided to drop the project for other reasons and now he would like to build a larger house for his family on the lot where the house is currently located. Mr. Boutrous stated that he would not be investing money into building a new house and wanting to move his current house if he thought it would hurt the development. Mr. Boutrous said when the project started two years ago only two landowners opposed the house move does not think it has changed that much.

Commissioner Conmy asked if Mr. Boutrous will be building a house on the lot where the house is being moved from. Mr. Boutrous said the plan is to move the house to the new location and live in it while a new house is being built on his lot.

Commissioner Juhala asked Mr. Boutrous to address the current status of the covenants. Mr. Boutrous responded by saying the covenants expired in July 2009.

Commissioner Bullinger asked the approximate age of the structure he would like to move. Mr. Boutrous said it is approximately seven to eight years old and is a very nice home, however is too small for his family.

Keith Larson said he is the developer and would like to answer any questions that the City Planning & Zoning Commission may have and that the covenants are current and have been extended for ten years. Mr. Larson continued by saying two years ago he approached the residents of Fox Island regarding the house move and at that time there were four landowners who opposed the house move even though it was to a different lot, but still within the development.

Commissioner Hegedus asked when the covenants were extended. Mr. Larson responded by saying they were extended in early September 2009.

Commissioner Bullinger asked Mr. Larson, as a developer, if his recollection of when the house was built is the same as Mr. Boutrous. Mr. Larson said it might have been a few years earlier.

Chairman Yeager closed the public hearing for the Fox Island Second Subdivision special use permit.

Commissioner Bullinger asked staff what the notification process is for this type of application. Mr. Greenquist said that letters were sent to property owners located within 1320 feet of the proposed house move, however, only the property owners located within 350 feet must be notified.

MOTION: Based on the findings contained in the staff report, Commissioner Hegedus made a motion to approve the special use permit to move a house previously occupied at another location to Lot 1, Block 3, Fox Island Second Subdivision. Commissioner Wangler seconded the motion with Commissioners Bullinger, Conmy, Hegedus, Juhala, Wangler and Yeager voting in favor of the motion and Commissioner Spier voting against. Commissioner Waldoch abstained from voting. The motion passed 6-1.

PUBLIC HEARING – SPECIAL USE PERMIT FOR PART OF THE NW¼ OF SECTION 35, T139N-R79W/GIBBS TOWNSHIP

Chairman Yeager called for the public hearing for special use permit to move a house previously occupied at another location to part of NW¼ of Section 35, T139N-R79W/Gibbs Township (1500 NE 112th Street). The property is located on the west side of 112th Street NE, north of County Highway 10.

Mr. Greenquist provided an overview of the requests and listed the following findings for the special use permit:

1. The house proposed for relocation has been inspected by the Bismarck Building Inspection Division. The occupancy permit will be issued when the items on the attached letter are completed.
2. The proposed special use would not adversely affect the public health, safety and general welfare.
3. The proposed special use would not be detrimental to the use or development of adjacent properties.
4. Adequate public facilities and services are in place.
5. The house to be moved and proposed use of the property will be compatible with adjacent land uses and existing zoning.
6. The proposed special use complies with all applicable provision of the zoning ordinance and is consistent with the general intent and purpose of the zoning ordinance.
7. The request is compatible with adopted plans, policies and accepted planning practice.

Mr. Greenquist also provided the following additional information:

1. The placement of a moved house is allowed as a special use in the RR zoning district, provided specific conditions are met. The proposed moved house meets all five provisions outlined in Section 14-03-08(4)(s) of the City Code of Ordinances (Zoning). A copy of this section of the City Code is attached.
2. Although this property is less than 40-acres and is unplatted, the house proposed to be moved to the property will replace an existing house. The applicant has indicated two existing houses will actually be removed. Platting is not required when an existing house is being replaced.

Mr. Greenquist said that based on the above findings, staff recommends approval of the Special Use Permit to move a house previously occupied at another location onto part of the NW¼ of Section 35, T139N-R79W/Gibbs Township (property located at 1500 112th Street NE).

Chairman Yeager opened the public hearing for the Gibbs Township special use permit.

No public comment was received.

Chairman Yeager closed the public hearing for Gibbs Township special use permit.

MOTION: Based on the findings contained in the staff report, Commissioner Wangler made a motion to approve the special use permit to move a house previously occupied at another location onto part of NW¼ of Section 35, T139N-R79W/Gibbs Township (1500 NE 112th Street). Commissioner Waldoch seconded the motion and it was unanimously approved with Commissioners Bullinger, Conmy, Hegedus, Juhala, Spier, Waldoch, Wangler and Yeager voting in favor of the motion.

OTHER BUSINESS

GOLFVIEW ESTATES

Ms. Lee stated at the August 26, 2009 City Planning & Zoning Commission meeting, the public hearing for Golfview Estates was held. Ms. Lee went on to say that there was discussion with Apple Creek Township where they indicated that the Township is opposed to the proposed subdivision and zoning change. Ms. Lee continued by saying that the motion was made because of the desire of the Township to move it forward and there was some confusion because Mr. Zent voted against the motion. Ms. Lee said that when the item reached the Board of City Commissioners they decided that since there was confusion, they voted to send the item back to the City Planning & Zoning Commission for further discussion and clarification. Ms. Lee commented that it is her understanding that the Township met with the applicant and the applicant's consulting engineer to discuss ways to modify the plat that the Township could support.

Mr. Zent stated that there have been good meetings with the landowners, the developers and the consulting engineer, however, an agreement has not been reached yet that will satisfy everyone's needs. Mr. Zent continued by saying that some of the issues have been resolved regarding the lot size and the approaches, but the Township is still discussing the proposed subdivision.

Mr. Jorgensen said there have been some good meetings with Apple Creek Township and they are in a position where the acre and a half lot size does seem to be an adequate solution as this phase of development. Mr. Jorgensen went on to say one of the main concerns at the meetings were the approaches into the proposed subdivision from Apple Creek Road. These have been discussed with the County Engineer and the approaches do meet the minimum requirements, however, the Township feels the location of the approaches are not an option at this point and would like see different access points. Mr. Jorgensen stated that it was the general consensus of the Township to reduce the number of approaches from two to one to address the site distance issue. Mr. Jorgensen commented that the subdivision was revised to remove the westerly most access and one lot. Mr. Jorgensen continued by saying that there needs to be further discussion with City and County staff, the developers, and Apple Creek Township about the secondary access policy related to joint jurisdiction. Mr. Jorgensen concluded by saying he would like the opportunity to meet with the County Engineer to discuss the two access points from Apple Creek Road with the input of the Township and City staff, and bring it back to the October 28, 2009 City Planning & Zoning Commission meeting.

Commissioner Bullinger asked if the revised plat will necessitate a change in the storm water management plan. Mr. Jorgensen responded by saying the storm water management plan will have to be revised.

Commissioner Wangler asked if the lots sizes have changed. Mr. Jorgensen answered by saying no, the lot size is based on an acre and a half but there are several lots that are two and a half acres.

Commissioner Wangler asked if the lot sizes are still a source of contention with Apple Creek Township because they wanted five acre lots. Mr. Zent said no, not as long as it is still under the jurisdiction of the City, the Township does not oppose the lot sizes. Mr. Zent concluded by saying if Apple Creek Township does acquire jurisdiction, then those items would have to be voted on.

Commissioner Hegedus asked if Apple Creek Township has any subdivisions that are less than five acres lots. Mr. Zent said there are, but the City approved those.

MOTION: Commissioner Hegedus made a motion to refer the plat back to the consulting engineer for revisions and public hearing and brought back to the City Planning & Zoning Commission for a public hearing. Commissioner Juhala seconded the motion and with Commissioners Armstrong, Conmy, Hegedus, Juhala, Spier, Waldoch, Wangler, Yeager and Zent voting in favor of the motion and Commissioner Bullinger voting against. The motion passed 9-1.

ERICKSON SUBDIVISION

Ms. Lee said that at the August 26, 2009 City Planning & Zoning Commission meeting the motion to approve the final plat for Erickson Subdivision included a condition that a private drive sign needed to be installed. Ms. Lee went on to say that County Engineer wants to develop a standard for private drive signs before installing this sign on the pole. Ms. Lee concluded by saying that the standards for private drive signs will be prepared and the Board of City Commissioners did approve the final plat for Erickson Subdivision on September 22, 2009.

ADJOURNMENT

There being no further business Chairman Yeager declared the Bismarck Planning & Zoning Commission adjourned at 6:31 p.m. to meet again on October 28, 2009.

Respectfully submitted,

Kimberley Gaffrey
Recording Secretary

Wayne Yeager
Chairman